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IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SEQUOIA MACHINERY, INC., a Corporation,
and KAWEAH COMPANY, a Corporation,

Appellants,

vs.

J. RODERICK JARRETT, Trustee of the
Estate of JAMES C. CLARK, Bankrupt,

Appellee.

BRIEF FOR APPELLANTS

APPEAL FROM
THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

FILED

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BRIEF FOR APPELLANTS

JURISDICTIONAL STATEMENT

This is an appeal from a Final Order dated January 30, 1967, of the United States District Court, Eastern District of California, affirming the Order of the Referee in Bankruptcy, dated April 12, 1967, in the Matter of James C. Clark, Bankrupt, No. 20557 ND, in Bankruptcy, holding the security interests of appellants in certain grain harvesting combines sold to the Bankrupt to be invalid as against the Trustee in Bankruptcy. The controversy arose in the Bankruptcy Court upon the Trustee's Petition for an Order to Show Cause directed to appellants to show the nature,

extent and validity of their alleged liens and for a turn-over Order for monies derived from the sale of the property after repossession by appellants in exercise of their alleged security rights, and upon the Order to Show Cause issued upon such petition. On April 19, 1967, appellants made timely filing of a Petition for Review of the Referee's Order to the District Court. On June 30, 1967, the United States District Court, M. D. Crocker, United States District Judge, presiding, made and entered its Order affirming the Referee's Order of April 12, 1967, and appellants made timely filing of Notice of Appeal from said Order on July 19, 1967. The jurisdiction of both the District Court and of the United States Circuit Court of Appeals for the Ninth Circuit rests upon the right of appellants to appeal a final Order made in a "controversy arising in proceedings in bankruptcy" under the provisions of Section 24 of the United States Bankruptcy Act; United States Code, Title 11, Chapter 4, Section 47. The amount in controversy exceeds \$500.00, and therefore, leave to appeal under Section 24 (a) of the Bankruptcy Act, 11 U.S.C.A., Section 47 is not required.

STATEMENT OF THE CASE

This is a controversy arising in a proceeding in Bankruptcy in which the trustee in bankruptcy claims that the security interests of the appellants in certain grain harvesting combines which had been sold by appellants to the bankrupt are invalid. The claim of invalidity is based upon the Trustee's contention that California

Commercial Code, Section 9401 (1)(a) required appellants to file financing statements in the office of the County Recorder of Tulare County, which was the county of the bankrupt's residence. The appellants contend that the financing statements were properly filed with the Secretary of State of the State of California. On July 19, 1966, following the filing of the petition in bankruptcy and the bankrupt's adjudication, appellants repossessed the grain harvesting equipment which they had sold to the bankrupt, and on August 5, 1966, a sale was held from which appellants realized the sum of \$30,200.00 for the equipment in which the security interests are now in controversy. On January 9, 1967, the Trustee filed his Petition for an Order to Show Cause to determine the nature, extent and validity of the appellants' security interests in said grain harvesting equipment and for a turn-over Order as to the money received upon such resale. An Order to Show Cause was issued upon the Trustee's Petition by the Referee in Bankruptcy and a hearing was held on January 17, 1967. There is no controversy as to the facts of the case. The parties entered into a Stipulation as to the facts on February 3, 1967, which stipulates that the facts of the case are as follows:

1. That James C. Clark is the bankrupt in the above-

entitled proceedings in bankruptcy in this Court and was adjudicated a bankrupt on a voluntary petition filed herein on July 5, 1966.

2. That petitioner, J. Roderick Jarrett, is the duly

appointed, qualified and acting Trustee of said bankruptcy estate.

3. That the bankrupt purchased the items of equipment

particularly described in Exhibit "A" attached hereto on conditional sale contracts as described in Exhibit "A", copies of which contracts are respondent's Exhibit I through VIII inclusive, said purchases being made by the bankrupt on the dates of the various contracts and for the purchase prices indicated on each of those contracts.

4. That the bankrupt was during the period from the date of the first contract until just prior to the filing of the bankruptcy petition engaged in the business of "custom harvesting". "Custom harvesting" is the common name used in the trade to designate the business of the bankrupt which is generally described as follows: The bankrupt owned the equipment (designated in Exhibit "A" and subject to the security interests of respondents) consisting of a gas dryer, a number of combines and a corn attachment. The bankrupt would enter into contracts with grain farmers for the harvesting of their grain crops. The bankrupt would agree to harvest barley, corn and milo for so many dollars per acre plus so many dollars per pound of grain in excess of one thousand pounds per acre or similar arrangements. The combines are self-powered, self-contained harvesting units which cut and thrash the grain and send the thrashed grain into a bulk tank on the combine from which it is removed into a bulk truck or other bulk tank on the ranch or elsewhere. The corn attachment unit is to attach to a combine for the purpose of converting its use from the harvesting of barley to the harvesting of sweet corn. The bankrupt would harvest the farmer's grain on a contract similar to that described

above and either leave the grain on the farm or transport it to a mill or other farm depending on his arrangement with the farmer.

5. During the period in question the bankrupt did not plant or raise any crops of any kind, nor did the bankrupt own or lease any land upon which agricultural crops or livestock were raised or grown. The bankrupt did not till the soil. The bankrupt was not a farmer. The bankrupt was a custom harvester and contracted with approximately 8 or 10 or more farmers per season for the harvesting of grain crops on the general terms outlined above. Most of these contracts were entered into in connection with grain crops in Tulare County, but some custom harvesting was done in Kings County.

6. The combine units are specialized equipment which can be used for the sole purpose of harvesting grain. A substantial portion of the grain harvesting in the San Joaquin Valley is done by custom harvesters doing business in a similar manner as the bankrupt did business as above described.

7. The bankrupt, in connection with his custom harvesting business employed various numbers of employees and during the last harvesting season, as many as 18 employees. All of the equipment specified on Exhibit "A", except the gas dryer, was used by the bankrupt in his custom harvesting operation and used by no person other than the bankrupt for no other purpose.

8. The gas dryer is a piece of equipment ordinarily used in a stationary position to dry grain which is transported to and from the dryer by the operator of the gas dryer, or the farmer.

The primary use of gas dryers is at mills and at gins. The bankrupt's gas dryer was located at his home and he contracted for gas drying on approximately the same type of arrangement as the custom harvesting arrangement. The gas drying is a business separate from the harvesting business.

9. That the fair-market value at the time of bankruptcy herein of each item of equipment described in Exhibit "A" is the sale price designated thereon.

Exhibit "A" is as follows:

<u>Item</u>	<u>CSC Date</u>	<u>Sale Price</u>	<u>Filed</u>	<u>Place Filed</u>
John Deere D-3096 with attachment #946	8/14/65	\$2,600.00	FS	Sacramento
John Deere D-2559 55 Combine #63614	4/16/62	\$1,800.00	CS	Sacramento
John Deere D-2603 105 Combine #1294	5/13/62	\$6,000.00	CS	Sacramento
John Deere D-2683 Gas Dryer #304	10/9/62	\$3,000.00	CS	Sacramento
John Deere D-2794 105 Combine #1894	5/14/63	\$6,000.00	CS	Sacramento
John Deere D-2964 105 Combine #3187	6/4/64	\$7,000.00	CS	Sacramento
John Deere D-2981 410 with corn attachment #480	9/3/64	\$1,800.00	CS	Sacramento
John Deere D-2617 105 Combine #1296	7/9/62	\$5,000.00	CS	Sacramento

CSC - Conditional Sale Contract
CS - Continuation Statement
FS - Financing Statement

The Trustee held that the financing statement covering the John Deere 550 Gas Dryer #304 was properly filed with the Secretary of State, and this appeal does not concern that item of equipment. The sole question in this case is whether Section 9401 (1)(a) of the California Commercial Code required appellants to file financing statements to perfect their security interests with the County Recorder of the county of the bankrupt's residence or whether Section 9401 (1)(c) of the Code required filing with the Secretary of State of California.

SPECIFICATION OF ERRORS RELIED UPON

1. The District Court erred in affirming the Order of the Referee in Bankruptcy, dated April 12, 1967, holding appellants' security interests invalid and granting to the Trustee in Bankruptcy a turn-over Order.

2. The District Court erred in holding that respondents were required by Section 9401 (1)(a) of the California Commercial Code to file their financing statements in the office of the County Recorder of Tulare County.

SUMMARY OF ARGUMENT

This controversy presents a question of statutory construction. Section 9401 of the California Commercial Code at subsection (1)(c) provides for filing of financing statements to perfect security interests with the office of the Secretary of State in all cases other than those specifically excepted in the preceding subsections (a) and (b) of Section 9401 (1). Appellants contend that the general rule requiring central filing with the Secretary of State applied in this case as to the financing statements covering the security interests of appellants in the commercial harvesting equipment of the bankrupt. Appellants contend that the exception contained in California Commercial Code Section 9401 (1)(a) requiring local filing of financing statements concerning "equipment used in farming operations" did not apply. Appellants submit that the words "farming operations" as used in Section 9401 (1)(a) mean the same as "farming ventures" and refer to the business or operation which is conducted by a farmer, because California Commercial Code Section 9109 (3) in enumerating specific classes of farming operations, refers only to "raising, fattening, grazing or other farming operations". Appellants argue, therefore, that equipment must be used by a debtor who is engaged in a farming operation in the sense of operating a farm in order to come within the exception of Section 9401 (1)(a) requiring local filing. The bankrupt in this case, admittedly was not a farmer, but, instead, was engaged in a commercial harvesting operation in more than one county. The

exception requiring local filing applies to essentially local transactions. Transactions by farmers are essentially local, because related to a farm. A transaction involving one who is not engaged in farming, even though he may be engaged in a business dealing with farmers, is not essentially local, and therefore, should not come within the local filing exception to be consistent with the intent and purpose of the entire Code.

ARGUMENT

I

UNDER THE UNIFORM COMMERCIAL CODE,
CENTRAL FILING WITH THE SECRETARY
OF STATE IS THE RULE AND LOCAL COUNTY
FILING IS THE EXCEPTION. WHEN THE EX-
CEPTION IS MADE, IT IS ONLY FOR "ESSEN-
TIALY LOCAL" TRANSACTIONS.

Section 9401 of the Uniform Commercial Code (UCC) sets forth in optional paragraph (1)(a) of the 2nd and 3rd alternatives the provision for local filing adopted by California. This is subparagraph (a) of California Commercial Code Section 9401 (1) which provides as follows:

- (1) The proper place to file in order to perfect a security interest is as follows:
 - (a) When the collateral is equipment used in farming operations, or farm products other than crops, or accounts or contract rights arising from or relating to the sale of farm products by a farmer, or

consumer goods, then in the office of the county recorder in the county of the debtor's residence or if the debtor is not a resident of this State, then in the office of the county recorder in the county where the goods are kept;

(b) When the collateral is crops or timber to be cut, then in the office of the county recorder in the county where the land on which the crops are growing or to be grown or on which the timber is standing is located;

(c) In all other cases, in the office of the Secretary of State.

(2)

In the Uniform Code comment, page 546, et seq. of West's Annotated Code, the Code Commissioners discuss the two systems of filing, local and state-wide, and the general preference for the state-wide system, saying at comment number 4, page 547 of the West's Annotated Code:

It is thought that sound policy requires a state-wide filing system for all transactions except the essentially local ones covered in subsection (1)(a) of the Second and Third Alternatives and transactions involving fixtures covered in subsection (1)(b) of the Second and Third Alternatives.

And on page 546 in commenting on the two systems, the commissioners say:

The more completely the files are centralized on a state-wide basis, the easier and cheaper it becomes to procure credit information; the more the files are scattered in local filing units, the more burdensome and costly. On the other hand, it can be said that most credit inquiries about local businesses, farmers and consumers come from local sources; convenience is served by having the files locally available and there is no great advantage in centralized filing.

It should be emphasized that the code commissioners said in their comment number 4 that the state-wide filing system is required by sound policy, except for "essentially local" transactions. A "farming operation" in the meaning of a farming venture or the business of a farmer, would be an essentially local business, because essentially related to the land. On the other hand, a transaction involving a commercial hauler of farm products, a commercial crop duster, or a commercial harvester who does work for many farmers would not be essentially local. Commercial Code Section 9401 (1)(a) does not say "farm equipment", but instead says "equipment used in farming operations". The reason for this must be that the same equipment may be farm equipment when used by a farmer in his farming operation and industrial equipment when used by a debtor who is not a farmer. The balance of subsection (a) of Section 9401 (1) in referring to farm products and the sale of

farm products when it inserts the words "by a farmer" further bears out and supports that what is contemplated for local filing is transactions involving a farmer and that "equipment used in farming operations" could be paraphrased "equipment used by farmers".

II

THE CODE RECOGNIZES COMMERCIAL HARVESTING EQUIPMENT AS BEING NOT ESSENTIALLY LOCAL.

Further on the point of whether transactions involving commercial harvesters such as those of the bankrupt are of "essentially local" character requiring local filing is Section 9103 of the California Commercial Code which discusses conflict of law rules where collateral may have contact with more than one jurisdiction. This statute says in part, "With regard to goods of a type which are normally used in more than one jurisdiction (such as automative equipment, rolling stock, airplanes, road building equipment, commercial harvesting equipment, construction machinery and the like . . .". It is interesting to note that commercial harvesting equipment is included among these itemized classes of equipment as an example of goods which are definitely not essentially local. It is a stipulated fact in our case that the bankrupt in his commercial harvesting business used his harvesters on contract jobs for many farmers and in more than one county. It is recognized that Section 9103 of the Commercial Code is referring to the jurisdiction of different states and not different counties, but the

point is that commercial harvesters are put in a class with commercial heavy equipment which has a relatively high likelihood of being moved from one jurisdiction to another and all of which is obviously of a type which would require central filing if involved in security transactions under the code.

III

WHILE THE COMMERCIAL CODE DOES NOT DIRECTLY DEFINE "FARMING OPERATIONS", THE CODE ENUMERATION OF THE SPECIFIC THINGS INCLUDED IN "FARMING OPERATIONS" PRECLUDES THE INCLUSION OF A BUSINESS OPERATION EVEN THOUGH RELATED TO AGRICULTURE WHICH DOES NOT INVOLVE THE PRODUCTION OF AGRICULTURE PRODUCTS.

California Commercial Code Section 9109 defines the classes of goods and provides at subdivision (2) that they are:

- (2) "Equipment" if they are used or bought for use primarily in business (including farming or a profession) or by a debtor who is a non-profit organization or a governmental subdivision or agency or if the goods are not included in the definitions of inventory, farm products or consumer goods.

And at Subdivision (3) that they are:

- (3) "Farm products" if they are crops or livestock or supplies used or produced in farming operations or if they are products of crops or

livestock in their manufactures states (such as ginned cotton, wool clip, maple syrup, honey, milk and eggs), and if they are in the possession of a debtor engaged in raising, fattening, grazing or other farming operations.

If goods are farm products they are neither equipment, nor inventory. (Emphasis added)

As stated above, the words "farming operations" are not directly defined by the code; however, in the above quoted subdivision (3) of Section 9109, the words "debtor engaged in raising, fattening, grazing or other farming operations" gives an indication of the meaning of "farming operations". The specific examples of farming operations there enumerated, involve the production of crops or other agricultural commodities. It would seem that the maxim of "expressio unius est exclusio alterius" would preclude the inclusion in the meaning of "farming operation" of a business operation albeit related to agriculture which does not involve the production of agricultural products. See 45 Cal. Jur. 2d Statutes, Section 133, pages 639-640. Further on this point, is the uniform code comment number 4 to Section 9109 which says in part at page 371, West's California Commercial Code Annotated:

The terms, "crops" "livestock" and "farming operations" are not defined; however, it is obvious from the test that "farming operations" includes raising livestock as well as crops; similarly, since eggs are products of livestock, livestock includes fowl.

IV

THE TENOR OF THE CODE CONSISTENT WITH
THE ESSENTIALLY LOCAL TRANSACTIONS
EXCEPTION IS THAT GOODS MUST BE IN THE
POSSESSION OF A FARMER OR THE TRANS-
ACTIONS MUST BE BY A FARMER TO QUALIFY
FOR LOCAL FILING.

When Commercial Code Sections 9401 (1)(a) with its language "relating to the sale of farm products by a farmer", and Commercial Code Section 9109 (3) with its words "and if they are in possession of a debtor engaged in raising, fattening, grazing or other farming operations" are compared, it becomes rather clear that "debtor engaged in farming operations" and "farmer", are, within the meaning of the code, the same. It has been stipulated in this case that the bankrupt was not a farmer, did not plant or raise crops of any kind and did not own or lease any land upon which agricultural crops or livestock were raised or grown.

The Trustee has argued that it is solely the use to which the equipment is put which is determinative and not the person who holds the equipment. In comment number 2 of the Uniform Commercial Code comment Section 9109 at page 370 of West's California Commercial Code Annotated, it is stated:

The classes of goods are mutually exclusive; the same property cannot at the same time and as to the same person be both equipment and inventory, for example.

The use of the words "and as to the same person" in this comment,

contradicts the Trustee's argument. Thus, a caterpillar tractor used by a farmer to level his land or to build field roads would be farm equipment and would require local filing, but a caterpillar tractor used by a land leveler or a road construction outfit would be commercial equipment and would require central filing. Further, one would not describe a commercial harvester as being "engaged in a farming operation" anymore than one would so describe a commercial trucker whose sole business is hauling crops to market, or a commercial land leveler whose sole business is leveling farm land, so that it can be planted to crops, or a farm supply retailer which has spray rigs and does commercial spray work. These businesses are auxiliary to the business of a farmer, but are not businesses in which we would say the proprietors are engaged in a farming operation. Appellants contend that in determining the place of filing of financing statement, reference must be made to the person and not to the equipment in order to make a determination. One engaged in the financing business who must determine where to file financing statements, would, in interviewing the debtor, ask the business the debtor was engaged in, in determining where to file. It would be impractical for the lender to have to make a determination as to various types of equipment as to whether they should be in any specific instance, called farm equipment or not farm equipment, since there are many types of equipment that may be farm equipment only when used by a farmer.

THE COMMERCIAL CODE ANNOUNCES A
POLICY OF LIBERAL CONSTRUCTION AND
A POLICY OF UPHOLDING THE VALIDITY
OF SECURITY AGREEMENTS.

California Commercial Code Section 1102 calls for a liberal construction of the code to promote its underlying purposes and policies and these are set forth. Section 9201 of the California Commercial Code says that a security agreement is effective between the parties and against creditors, except as otherwise provided in the code. These sections announcing the policy of the code and the general validity of security agreements require a construction wherever possible which upholds the validity of security agreements and commercial transactions. Under the general rules of construction a fair and reasonable meaning should be given to a statute to give effect to its apparent object and purpose and to promote justice. See 45 Cal. Jur. 2d, Statutes, Section 180, page 680. The consequences which may arise from a particular interpretation of a statute may be considered unless the language is clear and explicit so that a statute should normally be interpreted in a way which will make it reasonable and fair. See 25 Cal. Jur. 2d, Statutes, Section 122, page 631.

45 Cal. Jur. 2d, Statutes, Section 186, pages 684-685 discusses statutes providing for forfeitures or penalties and states that since forfeitures or penalties are not favored, a statute which would impose a forfeiture or penalty must be strictly construed and

as favorably to the person whose property is to be seized or forfeited as is consistent with principles of fair interpretation. The only argument from this is that in this case, we are talking about taking many thousands of dollars from a businessman who filed a financing statement which was in all respects regular as part of a commercial transaction, which in all respects complied with the law upon the sole argument that the financing statement should have been filed locally, instead of with the Secretary of State. The interpretation of the statute which would uphold the security interest and prevent a forfeiture would appear to be a fair one and the one contemplated by the Commercial Code.

CONCLUSION

The words "used in farming operation" are not clear in their meaning unless the entire commercial code and the purpose of the code is examined. The purpose and policy of the commercial code as evidenced by other code sections, and as shown by the Code Commissioners comments is to prefer central filing with the Secretary of State and to make local filing the exception. The language of the other code sections indicates that a farming operation is one which is engaged in by a farmer who produces agricultural products. It is an entire operation of production and is not one isolated phase performed by one who is not a farmer. Commercial businesses which relate to some isolated phase of the entire farming operation and are not engaged in by farmers do not meet

the test of essentially local transactions. The Commerical Code specifically recognizes commercial harvesters as not being essentially local. Therefore, upon an examination of all of the provisions of the Commercial Code and the code commissioners' comments, it becomes clear that the commercial harvesters were not equipment used in farming operations and that the security interest should be upheld. The case for validity of the security interests of the respondents is further bolstered by the general rules of statutory construction which require fairness and liberality and discourage forfeitures and also, by the general provisions of the Commercial Code announcing the policy favoring the validity of security interests and simplifying and encouraging commercial practices.

Respectfully submitted,

ROBERT P. STRINGHAM

Attorney for Appellants

February, 1968.

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 22194

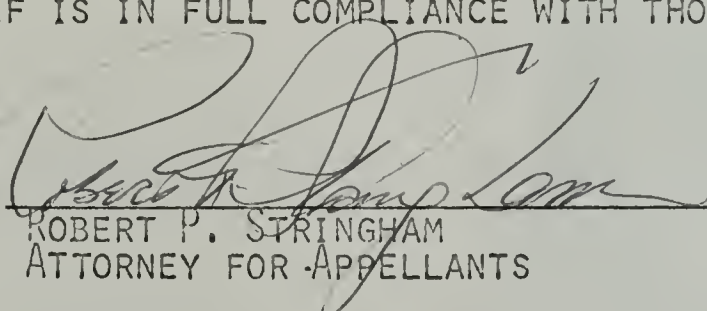
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OF JAMES C. CLARK, BANKRUPT, APPELLEE.

STATEMENT REQUIRED BY RULE 18-2 (G) OF THE RULES
OF THE UNITED STATES COURT OF APPEALS FOR THE
NINTH CIRCUIT

I CERTIFY THAT IN CONNECTION WITH THE PREPARATION OF
THIS BRIEF, I HAVE EXAMINED RULES 18, 19 AND 39 OF THE UNITED
STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, AND THAT, IN MY
OPINION, THE FOREGOING BRIEF IS IN FULL COMPLIANCE WITH THOSE
RULES.


ROBERT P. STRINGHAM
ATTORNEY FOR APPELLANTS

